

November 26, 2003

## VIA OVERNIGHT MAIL

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: Colonial Gas Company, D.T.E. 03-90

Dear Ms. Cottrell:

Enclosed for filing in the above referenced docket, please find an original and nine (9) copies of Bay State Gas Company's ("Bay State") Appeal of the Hearing Officer Ruling denying Bay State's motion to intervene as a full party.

Thank you for your assistance with this matter.

Very truly yours,

Patricia M. French

Patricia M. French

Senior Attorney

cc: John Craven, Esq., Hearing Officer, DTE
Patricia Crowe, Esq., KeySpan Energy Delivery

## COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Colonial Gas Company d/b/a/
Key Span Energy Delivery Petition
For Approval of 2002-2003 Exogenous
Costs Associated with Lost Base Revenues

D.T.E. 03-90

## BAY STATE GAS COMPANY'S APPEAL OF HEARING OFFICER RULING

Pursuant to 220 C.M.R. § 1.06(D)(3), Bay State Gas Company ("Bay State") hereby appeals the ruling of the Hearing Officer that grants Bay State limited participant status in the above proceeding.

On November 13, 2003, Bay State moved the Department to intervene in this proceeding as a full party. In its petition, Bay State provided its basis for being "substantially and specifically" affected by the Department's decision in this Colonial Gas Company proceeding. In particular, Bay State noted that it is a jurisdictional gas company with a pending petition before the Department seeking to recover lost base revenues as an exogenous cost. Bay State Gas Company's Motion to Intervene, Colonial Gas Co., D.T.E. 03-90 (Nov. 13, 2003) at 1-2, citing Bay State Gas Co., D.T.E. 03-36, filed on March 21, 2003. A Department order in that proceeding is still pending.

In Bay State's view, as it has argued to the Department in D.T.E. 03-36, the issues in its pending exogenous cost request for lost base revenue recovery and the issues presented in the various successful Colonial requests for lost base revenue recovery as an exogenous cost share substantive legal and regulatory policy grounds. In its petition to intervene, Bay State identified that the outcome of Colonial's pending request in this

proceeding may directly impact Bay State's pending petition before the Department and in addition, that the recovery of exogenous costs the Department may or may not endorse for its jurisdictional companies and apply to Bay State in the future may be impacted by the Department's findings and analysis in this proceeding. Motion at 2.

On November 20, 2003, the Hearing Officer denied Bay State's motion to intervene as a full party, and granted Bay State the right to participate in the proceeding as a "limited participant." At the same time, the Hearing Officer indicated that "the Department agrees in theory with Bay State when it argues that the Department's decision could affect Bay State's filing for recovery of lost base revenues." Transcript. 11/20/03 at 3.

Any person that can demonstrate he may be "substantially and specifically affected by the proceeding" may intervene in the proceeding. G.L. c. 30A, sec. 10. The Department may limit that party's participation, however only a full party – those who have demonstrated standing by being substantially and specifically affected — claim the right to judicial review of the Department's order. The issue of whether standing exists to permit a party to participate in a proceeding "is not simply a procedural technicality but rather involves remedial rights," as only certain persons "aggrieved by a final decision" of the Department may seek judicial review. Save the Bay v. Department of Pub. Utils., 322 N.E.2d 742, 749 (1975). If one fails to seek intervention status, that party may well lose its rights to protect itself.

A "limited participant does not qualify as a party in interest entitled to appeal [D]epartment decisions." Cablevision Systems Corp. v. Department of Tel. & Energy, 702 N.E.2d 799, 428 Mass. 436 (1998), citing Robinson v. Department of Pub. Utils., 416 Mass. 668, 671 n. 3, 624 N.E.2d 951 (1993); Attorney Gen. v. Department of Pub. Utils., 390 Mass. 208, 216-217, 455 N.E.2d 414 (1983). Since Bay State has demonstrated that it is substantially and specifically affected by the issues raised in the Department's review of Colonial's application of and recovery of lost base revenues through its exogenous cost provision, it should be granted full party status. In addition, because the Hearing Officer agreed that the Department's decision in this case may affect Bay State's substantive rights, the Commission should review Bay State's motion and grant Bay State's request for full party status.

In addition, it should be noted that (1) Bay State's interest in protecting its rights is only if the proceeding or the Department's order take a substantive detour from the Department's past exogenous cost approvals of Colonial's lost base revenue; and (2) Colonial does not object to Bay State's intervention as a full party.

WHEREFORE, for all the reasons set forth, Bay State Gas Company respectfully requests that the Department of Telecommunications and Energy reverse the Hearing

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Officer's ruling and permit Bay State Gas Company leave to intervene in this proceeding as a full party.

Respectfully submitted,

**BAY STATE GAS COMPANY** 

By its attorney,

Patricia M. French Senior Attorney

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Dated: November 25, 2003